

Internal Revenue Service

Department of the Treasury
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CC:INTL:B04
PLR-124373-09

In Re: Request for extension of time to
request a closing agreement under Treas.
Reg. § 1.1503-2(g)(2)(iv)(B)(3)(i)

Date:
June 24, 2011

Legend

Corporation U =

Corporation X =

Corporation Y =

Years 1 through 14 =

AA =

Dear :

This replies to a letter dated April 30, 2009, which asked for an extension of time under Treas. Reg. § 301.9100-3 to submit a request to enter into a closing agreement with the Internal Revenue Service pursuant to Rev. Proc. 2000-42, 2000-2 C.B. 394. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by the appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Corporation X was the parent of an affiliated group of corporations that filed a consolidated return ("Group X") from the time Corporation X was formed in Year 1 until Group X terminated in Year 14.

From Years 1 through 14, members of Group X engaged in business activities in various foreign countries. Certain of these activities constituted foreign branches within the meaning of Treas. Reg. § 1.367(a)-6T(g). As a result, these foreign branches were separate units described in Treas. Reg. § 1.1503-2(c)(3)(i)(A), and the members of Group X that owned these branches were domestic owners within the meaning of Treas. Reg. § 1.1503-2(c)(9). Dual consolidated losses ("DCLs"), within the meaning of Treas. Reg. § 1.1503-2(c)(5), were attributable to certain of these separate units. Group X filed an election with respect to each DCL pursuant to Treas. Reg. § 1.1503-2(g)(2).

In Year 14, and in connection with other steps that occurred pursuant to a restructuring, all of the shares of AA members of Group X were transferred to Corporation U, a newly-formed domestic corporation, in an exchange described in I.R.C. § 351. Immediately after this transaction, and as a result of Corporation U issuing stock to other shareholders, Corporation U became the parent of a new consolidated group ("Group U"). These two transactions are together referred to as the Year 14 Restructuring.

As a result of the Year 14 Restructuring, the AA members of Group X whose stock was transferred to Corporation U ceased to be members of Group X and became members of Group U. These corporations had reported DCLs on elections filed by Corporation X under Treas. Reg. § 1.1503-2(g)(2) at some time during years 1 through 14. To avoid recapture of these DCLs as a result of the Year 14 Restructuring, Corporation X and Corporation U were required to enter into a closing agreement with the Internal Revenue Service pursuant to Treas. Reg. § 1.1503-2(g)(2)(iv)(B)(3)(i).

Section 3.02 of Rev. Proc. 2000-42 provides that a taxpayer must enter into such a closing agreement with the Internal Revenue Service before the taxpayer files its tax return for the taxable year of the triggering event at issue. Alternatively, the taxpayer may submit its request for a closing agreement by the due date of its return, including extensions, for the year in which the triggering event took place.

Corporation X and Corporation U failed to enter into a closing agreement with respect to the Year 14 Restructuring in a timely manner. Accordingly, Corporation Y, as successor-in-interest to Corporation X, is requesting relief under Treas. Reg. §§ 301.9100-1 and -3 to obtain an extension of time to enter into a closing agreement with respect to the Year 14 Restructuring.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time under the rules set forth in Treas. Reg. §

301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence, including affidavits described in Treas. Reg. § 301.9100-3(e), to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and that the grant of relief will not prejudice the interests of the Government.

Requests to enter into a closing agreement are regulatory elections as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Corporation Y, as successor-in-interest to Corporation X, an extension of time, provided the requirements set forth in Treas. Reg. § 301.9100-3(a) are satisfied.

Based on the facts and information submitted, we conclude that Treas. Reg. § 301.9100-3(a) is satisfied with respect Corporation X's failure to file a timely request for a closing agreement as a result of the Year 14 Restructuring. Accordingly, Corporation Y, as successor-in-interest to Corporation X, is granted an extension of time of 60 days from the date of this ruling letter to submit a request to enter into a closing agreement pursuant to Rev. Proc. 2000-42 with respect to the DCLs that, absent such a closing agreement, would have been recaptured as a result of the transferred corporations ceasing to be members of Group X because of the Year 14 Restructuring.

In anticipation of being granted the extension requested herein, Corporation X and Corporation U have already filed a request to enter into a closing agreement with the Internal Revenue Service. Based on the relief granted in this ruling, the request to enter into a closing agreement will now be considered. The grant of an extension of time, however, is not a determination that the parties may enter into the closing agreement, itself. Treas. Reg. § 301.9100-1(a).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

John J. Merrick
Special Counsel
Office of Associate Chief Counsel (International)

Enclosure: